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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

THE PEOPLE, Plaintiff and Respondent, v. MANUEL BALLESTEROS, Defendant and Appellant.	C087169 (Super. Ct. No. STKCRFECOD20130007425)

Appointed counsel for defendant Manuel Ballesteros asked this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) Finding no arguable error that would result in a disposition more favorable to defendant, we will affirm the judgment.

I

In July 2013, Stockton police officers stopped Manuel Vega, Geovany Norzagaray-Espinosa, and defendant for a traffic violation. Vega was driving, Norzagaray-Espinosa was in the front passenger seat, and defendant was in the rear seat behind the driver. Defendant had a large black trash bag next to him.

The front and rear windows on the driver's side of the car were rolled down, and the officers smelled a strong marijuana odor coming from the car. Each of the men had remnants of a green leafy residue on their shirts.

After removing Vega from the driver's seat, Officer Julio Morales asked defendant to step out of the car. Defendant told him there was approximately four pounds of marijuana in the car and that he had a marijuana card. The marijuana card was not in defendant's possession.

Officer Kevin Knall used a police-issued card to advise defendant of his *Miranda* rights. Defendant said, "yes" when asked whether he understood his rights. Defendant then waived his *Miranda* rights and told Officer Knall that he and the other men in the car rented the backyard of a house in the country for $800 to grow marijuana. He also consented to a search of his cell phone, which included text messages that indicated he was selling marijuana. Defendant had over $300 in his pocket. A subsequent search of the black trash bag revealed 1,079 grams of packaged leafy material that tested presumptively positive for marijuana, and a functional digital scale with green and brown residue.

During the traffic stop, defendant spoke English to the officers. Vega and Norzagaray-Espinosa spoke Spanish to the officers.

Defendant was charged with the sale or transportation of marijuana (Health & Saf. Code, § 11360, subd. (a) -- count 1) and possession of marijuana for sale (Health & Saf. Code, § 11359 -- count 2). He pleaded no contest to count 2 in exchange for a suspended sentence, probation, and dismissal of count 1. The trial court suspended imposition of sentence, placed defendant on probation for five years, and dismissed count 1.

In April 2017, the trial court granted defendant's petition pursuant to Proposition 64 to redesignate his felony marijuana possession conviction to a misdemeanor. (Health and Saf. Code, § 11361.8, subd. (b).) Later that month, defendant petitioned the trial court to dismiss or expunge his misdemeanor conviction pursuant to

Penal Code section 1203.4. The trial court denied the petition and ordered defendant to remain on probation.

In August 2017, defendant moved to withdraw his plea, claiming it was not knowing, intelligent or voluntary and that there was no factual basis to support the plea. Defense counsel's declaration supporting the motion stated that at the time defendant entered his plea, he did not understand the immigration consequences of his plea and was not advised in Spanish regarding the nature and consequences of a no contest plea. Defendant's declaration supporting the motion stated he was a Spanish speaker and did not have the benefit of an interpreter during the plea proceedings. He claimed his counsel at the time never explained to him the immigration consequences of the plea nor did the trial court advise him in Spanish of the plea's immigration consequences. As a result, he did not understand the immigration consequences of his plea.

In a supplemental declaration, defendant declared that an immigration attorney informed him there was a substantial probability his misdemeanor conviction would cause him to be deported. Defendant said he never would have pleaded no contest had he been properly advised of the plea's potential immigration consequences.

In November 2017, the trial court held a hearing on defendant's motion to withdraw his plea. Defendant testified at the hearing with a Spanish interpreter. According to defendant, while his codefendant was provided an interpreter, he was not. He was unsure whether he was offered an interpreter. He would have liked to have had a Spanish interpreter, but was unaware he could have asked for an interpreter. He claimed he did not understand what was going on during the 2013 plea proceedings, and only said yes to the plea because he was instructed to do so by his counsel; he said his attorney never explained the immigration consequences of his plea.

Upon cross-examination, however, defendant conceded that at the time of his arrest in July 2013 he spoke English to the arresting officer. He also acknowledged that he had lived in the United States for about 20 years, and had worked driving forklifts and

in farm labor. He completed four years of high school in Stockton and graduated. He also acknowledged going to school in Stockton before high school, and admitted that he did not have an interpreter while attending school in Stockton.

Following defendant's testimony, the trial court denied the motion, finding that defendant never requested an interpreter, that he spoke sufficient English given his attendance and graduation from a California high school without an interpreter, and that he was properly advised of and waived the immigration consequences of his plea. In so finding, the trial court referenced a transcript of the plea hearing indicating that defendant had been advised that if he was not a citizen of the United States, entry of the plea would result in his deportation and inability at some future date to become a citizen, or if he left the country he would be denied lawful reentry. Defendant responded "yes" when asked if he understood the above immigration consequences.

Defendant filed a notice of appeal from the court's November 20 order denying his motion to withdraw his plea. He then filed a second notice of appeal challenging the validity of his 2013 no contest plea. The trial court denied his request for a certificate of probable cause, and it informed defendant that his appeal was inoperable. Defendant abandoned the appeal in February 2018.

Defendant moved, pursuant to Penal Code section 1473.7, to withdraw his 2013 no contest plea on the ground that when his plea was entered, he did not meaningfully understand, defend against, or knowingly accept, the actual or potential adverse immigration consequences of his plea. His counsel's supporting declaration stated that defendant had informed him he was not advised in Spanish regarding the nature and consequences of his no contest plea and the possible consequences of his immigration status. Counsel also said defendant's prior attorney testified at a hearing on his prior motion to withdraw his plea that he could not recall ever advising defendant of the immigration consequences of his plea. The trial court denied defendant's renewed motion to withdraw his plea on March 29, 2018.

In April 2018, defendant filed a notice of appeal challenging the validity of his plea and from the March 29, 2018 order denying his motion to withdraw his plea pursuant to Penal Code section 1473.7. The trial court denied his request for a certificate of probable cause and informed defendant the appeal was inoperable.

Defendant filed another notice of appeal on May 14, 2018, which stated that the appeal was based on the sentence or other matters occurring after the plea that did not affect the validity of the plea.

II

Appointed counsel filed an opening brief setting forth the facts of the case and asking this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra,* 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing the opening brief. More than 30 days elapsed and we received no communication from defendant.

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

/S/
MAURO, Acting P. J.

We concur:

/S/
MURRAY, J.

/S/
KRAUSE, J.